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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 004795

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SUBJECT: PAKISTAN: RECONSTITUTED SUPREME COURT AND
PROVINCIAL HIGH COURTS

REF: ISLAMABAD 4694

Classified By: Anne W. Patterson, Reasons 1.4 (b), (d)

¶1. (C) Summary: President Musharraf has reportedly decided that, before he can schedule parliamentary elections, the newly constituted Supreme Court must rule on the pending case challenging his own election. Under Musharraf's November 3 Provisional Constitution Order (PCO), he fired all Supreme Court and provincial High Court justices. They now must take a loyalty oath or face termination and possible arrest. Despite significant resistance, the government quickly replenished most court benches. To date, there are nine members of the Supreme Court, and the Attorney General is seeking an additional two justices. An eleven-member Supreme Court bench will then take up the Musharraf eligibility case next week. End summary.

Report Card

¶2. (C) Twelve of 17 former Supreme Court justices refused to take the oath under the November 3 PCO. To date, five former justices did agree to take the oath and are now part of a reconstituted Supreme Court that includes nine justices. Attorney General Malik Qayyum told Ambassador November 7 (septel) that his goal was to increase the court to eleven members. He is even reaching out to former members of the Court who voted in favor of reopening the Islamabad Red Mosque under the leadership of an extremist imam (septel). This new Court met for the first time November 6. Qayyum expects an eleven-member court next week to begin hearing the pending case challenging Musharraf's eligibility as a presidential candidate. Musharraf reportedly has decided that he cannot schedule parliamentary elections until the Court rules on his own fate.

¶3. (C) However, the scene is different at the provincial level. At the Sindh High Court, only three of the 27 judges, including Chief Justice Sabihuddin Ahmed, refused to pledge allegiance. In Peshawar, four of the 13 judges refused to take the oath, including Chief Justice Tariq Pervez Khan. The most surprising announcement took place at the Balochistan High Court where all five of the sitting judges took the oath. In Lahore, it appears that 12 of the 31-member Punjab High Court have refused to join the new bench.

November 3

14. (U) On the evening of Saturday, November 3, seven of the Supreme Court justices, in an impromptu move, unanimously rejected the PCO. Their decision ordered top GOP officials, including Prime Minister Shaukat Aziz and the Chief of Army Staff (and President) Pervez Musharraf, to stand down. Shortly after the decision was declared, GOP officials on hand informed the Chief Justice that his services were "no longer needed" and placed him under arrest. Musharraf personally swore in Justice Abdul Hameed Dogar, fourth in line on the Supreme Court, as the new Chief Justice. Eight justices on the new Court overturned Chaudhry's November 3 decision against the PCO.

Trying to Maintain Discipline

17. (U) During their period of house arrest, former Chief Justice Chaudhry attempted November 6 to rally his "troops" by calling a group of lawyers from the Islamabad Bar Association via cell phone. He urged them to "rise up" and save the constitution. The Justice told his followers that he would soon launch his next phase of the struggle for judiciary independence upon his release in attempts to recreate the successful protest campaign carried out by the country's lawyers against Musharraf's first dismissal of the Chief Justice. Authorities temporarily suspended cellphone coverage in parts of Islamabad, but these actions did not prevent several dozen lawyers from protesting in the city's court complex upon hearing Chaudhry's call. (Note: The protest lasted roughly 30 minutes and ended peacefully.)

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18. (C) Comment: Musharraf's efforts to reinstate the Supreme Court with as many former justices as possible is an attempt to give his new court credibility that it will likely never have. Despite his success in re-filling the Supreme Court and provincial High Court benches, the judicial system is grinding to a halt because many lawyers have been arrested and bar associations across the country are going on strike to protest the state of emergency. End comment.

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